

REMARKS

Applicant has not amended the claims in this response.

Claims 2-4 and 10-20 were cancelled in prior responses.

Claims 1 and 5-9 are currently pending in the application.

Claims Rejections – 35 USC § 103

(A) Claims 1, 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,706,306 to Berger et al. (“Berger”).

This rejection is respectfully traversed.

Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

Claim 1 recites among other things an assembly with the following features:

an elongate tubular housing having opposed first and second ends; and

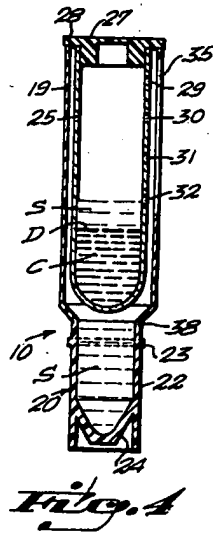
a solid partition forming a closed bottom positioned within said housing between said first and second ends;

said housing defining a volume for specimen collection and containment therein between said first end and said partition;

said second end forming a false bottom comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom.

Applicant submits that Berger fails to disclose, teach or suggest at least the claimed features of a false bottom.

The Examiner proposes that Berger discloses an elongate tubular housing (19) having opposed first and second ends, with said second end forming a false bottom comprising a bottom end below said partition comprising an annular skirt (side walls of tube 19) and a semi-spherical bottom comprising an opening (at 38) therein (see column 5, lines 30-35).



In contrast, Berger teaches that it is essential to have a plurality of through openings (29, 30, 31 and 32) in the sidewall of sample collecting tube (25), so that the separated serum sample can flow through openings (29, 30, 31 and 32) and trickle down cylindrical housing member (19) into specimen cup (20) (see Fig. 4 shown above and Col. 5 lines 3 to 26).

Therefore as serum sample can flow from tube (25) to separation cup (20) via cylindrical housing member (19), tube (25) cannot be considered to function as a false bottom.

Thus, there is no suggestion in Berger to have a false bottom.

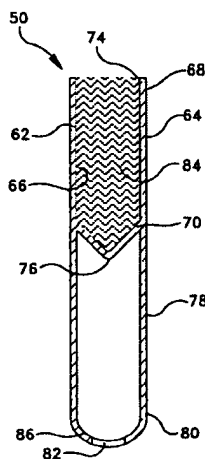
Conversely the use of a claimed false bottom would preclude fluid flow from tube (25) to separation cup (20) thus rendering the syringe of Berger inoperable.

The Examiner states in the office action dated December 17, 2008 (emphasis added):

"In response to applicant's arguments that Berger et al. does not teach a false bottom, examiner respectfully disagrees and points to Figure 5, in which it is clearly seen that at reference character 38 there is a false/open bottom (bottom portion tapers into an open false bottom in the exact same manner described by applicant in Figures 3-4 and on page 9). Liquid flows out of the false bottom of the instant invention as well so examiner is unsure why exactly applicant takes the position that there is no false bottom in Berger et al. Furthermore, one could take the position that the snap off bottom cup (20) makes the bottom a false bottom because it appears to be "closed but by removing the bottom cup the bottom then becomes "open"."

Applicant respectfully submits that liquid does not flow out of or into the false bottom of the instant invention during use.

The claimed invention defines an interior volume (84) (see shaded area) for containment of a specimen only between the first end (68) of the elongate housing and the solid partition forming a closed bottom end or true bottom (76) (See e.g. Figure 4 shown below, (emphasis added) and paragraph [0034] of the published application).



Thus, no liquid can flow out of the false bottom end (80) of the instant invention as the solid partition forms a closed bottom end or true bottom (76) to contain the specimen in volume (84).

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Berger. In addition, claims 5, 6 and 9 being dependent on claim 1 are likewise patentable over the cited reference.

(B) Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger as applied to claim 1 and further in view of U.S. Patent No. 5,458,854 to Burns ("Burns").

These rejections are respectfully traversed.

Berger fails to disclose, teach or suggest the invention of claim 1 for the reasons as discussed above.

Burns is cited for use of a thermoplastic material.

Applicant submits Burns fails to disclose, teach, or suggest the claimed assembly of claim 1 as discussed previously and does not remedy the shortcomings of Berger. In addition, claims 7 and 8 being dependent on claim 1 are likewise patentable over the cited references.

Conclusion

In view of the remarks herein, applicant submits the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,

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